

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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JONATHAN MONSARRAT,

Plaintiff,

v.

BRIAN ZAIGER,

Defendant.

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CIVIL ACTION NO.

1:17-cv-10356-PBS

**MOTION FOR LEAVE TO FILE  
REPLY IN SUPPORT OF MOTION  
TO DISMISS**

Defendant Brian Zaiger hereby moves this Honorable Court pursuant to L.R. 7.1(b)(3) for leave to file a brief, five-page reply brief in support of his Motion to Dismiss filed on October 31, 2017 (Dkt. No. 59). Plaintiff's opposition to the motion (Dkt. No. 65) misconstrues the law regarding the statute of limitations and misapplies the law as it relates to copyrightability and fair use. The opposition also omits discussion of five of the six copyright claims and all but one fair use factor. A brief reply may assist the Court in focusing on those issues in anticipation of the December 5, 2017 hearing (Dkt. No. 66). The proposed reply is attached hereto as "Exhibit A".<sup>1</sup>

Dated: November 30, 2017.

Respectfully submitted,

/s/ Jay M. Wolman

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Jay M. Wolman (BBO# 666053)  
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<sup>1</sup> Plaintiff's counsel indicated that Plaintiff does consent to the relief requested herein on the condition that Defendant consent to the filing of a surreply. The issue of a surreply is premature, so such consent cannot yet be given, but Defendant's counsel will confer in good faith should Plaintiff, upon reviewing the reply, still deem there is a non-frivolous surreply that is warranted.

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*Attorneys for Defendant,  
Brian Zaiger*

**CERTIFICATE OF CONFERRAL**

Pursuant to L.R. 7.1, I hereby certify that on November 20, 2017, I attempted, in good faith, to resolve or narrow the issue, by attempting to contact Plaintiff's counsel by telephone and electronic mail.

/s/ Jay M. Wolman  
Jay M. Wolman

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on November 30, 2017.

/s/ Jay M. Wolman  
Jay M. Wolman